

**SUBJECT:** Restoring certain rights to a criminal defendant convicted in Texas

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 5 ayes — Herrero, Burnam, Canales, Schaefer, Toth

3 nays — Carter, Leach, Moody

1 absent — Hughes

**WITNESSES:** For — Yannis Banks, Texas NAACP; Terri Been; Chris Howe; Travis Leete and Ana Yanez Correa, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Matt Simpson, American Civil Liberties Union of Texas)

Against — None

**BACKGROUND:** Code of Criminal Procedure, art. 48.05 allows a person convicted of an offense to submit an application for restoration of any civil rights forfeited under Texas laws because of the conviction. This application may be made only by an individual convicted of a federal offense or an offense under the laws of another country, other than offense involving:

- violence or the threat of violence;
- drugs; or
- firearms.

Offenses under the laws of another country involving firearms are excepted only if the elements of the offense are substantially similar to the elements of an offense that is a felony under Texas law. If the offense was not substantially similar to a Texas felony, the person may still apply for restoration of rights.

An applicant may not apply for restoration of the person's rights under art. 48.05 unless:

- they have completed the sentence for the offense;
- the conviction of a federal offense occurred three or more years before the application, or the conviction of an offense under the

laws of another country occurred two or more years before the date of the application; and

- the individual has not been convicted at any other time of an offense under the laws of Texas, another state, or the United States.

After submission of the application, the entity to which the application is submitted must review the application and must recommend to the governor whether or not to restore the person's civil rights. The governor then may grant or deny the restoration.

**DIGEST:**

CSHB 439 would allow a person who was convicted of an offense under Texas law to apply for restoration of the person's civil rights under Code of Criminal Procedure, art. 48.05 unless the offense:

- required registration as a sex offender under Code of Criminal Procedure, ch. 62; or
- involved drugs.

Under the bill, the time that would have to elapse after conviction before a person could apply for restoration would be three years for all eligible offenses.

The bill would take effect September 1, 2013, and would apply to a defendant who was convicted before, on, or after that date.

**SUPPORTERS  
SAY:**

CSHB 439 would correct an inconsistency in the law and afford the same rights and opportunities to all Texans who have had their rights restricted because of a criminal conviction. Current law allows restoration of rights only for people who were convicted under federal law or the law of another country, and it is unfair to Texans that this opportunity is provided to people who have committed crimes elsewhere, but not to those who have committed crimes within Texas. People who break Texas laws are equally capable of rehabilitation and deserving of the opportunity to restore their full civil rights as are those who break the laws of other jurisdictions.

The bill would allow for more successful reintegration and help those who had been convicted of a felony to be better civic participants. Having the opportunity to hold public office, administer an estate, or serve on a jury allows people who have completed their punishment feel less stigmatized and more included, which in turn helps keep them from re-offending. By

allowing Texans who have been convicted of crimes in the state to have these rights restored, the bill would lower barriers to successful re-entry. It would send a message that the state benefits from the involvement of people who have completed the punishment for their crimes and desire to become active, engaged members of the community again.

CSHB 439 would not threaten public safety or the safety of victims of violent crimes. Under the bill, the review procedure for these applications would remain the same. All parties reviewing the application could recommend against restoration of rights, and the governor still would have the final say in granting or denying this restoration. This multiple-part review provides sufficient protection to ensure that only persons whose rights should and could safely be fully restored would be successful with their applications.

To further ensure the protection of public safety, the bill could be amended to prevent a person convicted in Texas of a crime involving violence, the threat of violence, or a firearms crime punishable as a felony from seeking restoration of civil rights in this state.

OPPONENTS  
SAY:

CSHB 439 could threaten public safety by allowing for the restoration of rights to dangerous felons. The bill would apply to any offense except for a few narrowly carved out cases, which would not fully ensure the protection of the victims of violent crimes. For example, under CSHB 439, a person convicted of a family violence offense might be able regain the person's firearms rights, which could be dangerous or threatening to that person's previous victims. The bill's exceptions for offenses that would prevent a felon convicted in Texas from seeking restoration of civil rights should mirror the exceptions in current law, which prevent felons convicted under federal or foreign law of violent and firearm-related crimes from seeking restoration of rights in this state.

NOTES:

The author intends to introduce a floor amendment that would prevent a felon convicted in Texas of a crime involving firearms, violence, or the threat of violence from seeking restoration of rights.